

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

U.S. BANK, NATIONAL ASSOCIATION, in its capacity
as Trustee, JOSHUA N. TERRY, and ACIS CAPITAL
MANAGEMENT, L.P.,

Plaintiffs,

v.

THE CHARITABLE DONOR ADVISED FUND, L.P.,
CLO HOLDCO LTD., and NEXPOINT STRATEGIC
OPPORTUNITIES FUND,

Defendants.

No. 1:21-cv-11059-GHW

**DECLARATION OF MISHA BOUTILIER IN SUPPORT OF PLAINTIFFS’
MEMORANDUM OF LAW IN OPPOSITION TO THE DAF PARTIES’
MOTION TO COMPEL**

I, **MISHA BOUTILIER**, an attorney duly admitted to the Bar of the State of New York,
hereby declare and state under the penalties of perjury as follows:

1. I am an associate at Quinn Emanuel Urquhart & Sullivan, LLP, 51 Madison Avenue, 22nd Floor, New York, New York 10010, and am counsel to Plaintiffs Acis Capital Management, L.P. (“ACM”) and Joshua N. Terry (“Mr. Terry”), in the above-captioned matter.

2. I submit this declaration in support of Plaintiffs’ Memorandum of Law in Opposition to the DAF Parties’ Motion to Compel

3. Attached as Exhibit 1 is a true and correct copy of ACM’s Responses and Objections to the DAF Parties’ 1st Set of RFPs, dated May 15, 2023.

4. Attached as Exhibit 2 is a true and correct copy of U.S. Bank, National Association, in its capacity as Trustee's (the "Trustee") Responses and Objections to the DAF Parties 1st Set of RFPs, dated May 15, 2023.

5. Attached as Exhibit 3 is a true and correct copy of emails exchanged between counsel for Plaintiffs and counsel for Defendants between June 16, 2023 and July 10, 2023.

6. Attached as Exhibit 4 is a true and correct copy of Plaintiffs' Second Set of RFPs to the DAF Parties, dated July 21, 2023.

7. Attached as Exhibit 5 is a true and correct copy of ACM's Responses and Objections to the DAF Parties' Second Set of RFPs, dated August 21, 2023.

8. Attached as Exhibit 6 is a true and correct copy of the Trustee's Responses and Objections to the DAF Parties' Second Set of RFPs, dated August 21, 2023.

9. Attached as Exhibit 7 is a true and correct copy of ACM and Mr. Terry's Responses and Objections to the DAF Parties' Interrogatories, dated August 21, 2023.

10. Attached as Exhibit 8 is a true and correct copy of ACM and Mr. Terry's Responses and Objections to the DAF Parties' Requests for Admission, dated September 12, 2023, and excluding the exhibits thereto.

11. Attached as Exhibit 9 is a true and correct copy of the Trustee's Responses and Objections to the DAF Parties' Requests for Admission, dated September 12, 2023.

12. Attached as Exhibit 10 is a true and correct copy of the DAF Parties' Second Set of RFPs, Interrogatories, and RFAs to ACM, dated July 21, 2023.

13. Attached as Exhibit 11 is a true and correct copy of a letter from counsel to the DAF Parties to counsel for Plaintiffs, dated August 11, 2023.

14. Attached as Exhibit 12 is a true and correct copy of a letter from counsel to ACM and Mr. Terry to counsel to the DAF Parties, dated August 25, 2023.

15. Attached as Exhibit 13 is a true and correct copy of a letter from counsel to the Trustee to counsel to the DAF Parties, dated August 25, 2023.

16. Attached as Exhibit 14 is a true and correct copy of an email from counsel to the DAF Parties to Plaintiffs' counsel, dated August 30, 2023.

17. Attached as Exhibit 15 is a true and correct copy of the transcript of the Court's September 22, 2023 pre-motion conference in this action.

18. Attached as Exhibit 16 is a true and correct copy of an email from counsel to ACM and Mr. Terry to the DAF Parties' counsel, dated September 22, 2023.

19. Attached as Exhibit 17 is a true and correct copy of the Complaint in *Mark S. Kirschner as Litigation Trustee of the Litigation Trustee of the Litigation Sub-Trust v. James D. Dondero et al.*, Case No. 21-03076-sgj, in the United States Bankruptcy Court for the Northern District of Texas, filed on October 15, 2021.

20. Attached as Exhibit 18 is a true and correct copy of the DAF Parties' 1st Set of RFPs to ACM, dated April 14, 2023.

21. Attached as Exhibit 19 is a true and correct copy of ACM and Mr. Terry's Responses and Objections to NexPoint's 1st Set of RFPs, dated May 4, 2023.

22. Attached as Exhibit 20 is a true and correct copy of the Amended Complaint in *Mark S. Kirschner as Litigation Trustee of the Litigation Trustee of the Litigation Sub-Trust v. James D. Dondero et al.*, Case No. 21-03076-sgj, in the United States Bankruptcy Court for the Northern District of Texas, filed on May 19, 2022.

23. Attached as Exhibit 21 is a true and correct copy of a letter from counsel to the Trustee to counsel to the DAF Parties, dated August 18, 2023.

24. Attached as Exhibit 22 is a true and correct copy of a letter from counsel to ACM and Mr. Terry to counsel to the DAF Parties, dated August 18, 2023.

25. Attached as Exhibit 23 is a true and correct copy of the DAF Parties' Second Set of RFPs, Interrogatories, and RFAs to Mr. Terry, dated July 21, 2023.

26. Attached as Exhibit 24 is a true and correct copy of the DAF Parties' Second Set of RFPs, Interrogatories, and RFAs to the Trustee, dated July 21, 2023.

27. Attached as Exhibit 25 is a table displaying the overlap between the DAF Parties' 1st RFPs to Plaintiffs and the DAF Parties' 2nd RFPs to Plaintiffs.

28. Attached as Exhibit 26 is a true and correct copy of Mr. Terry's responses and objections to the DAF Parties' 1st Set of RFPs, dated May 15, 2023.

29. Attached as Exhibit 27 is a true and correct copy of Mr. Terry's Responses and Objections to the DAF Parties' Second Set of RFPs, dated August 21, 2023.

30. Attached as Exhibit 28 is a true and correct copy of the Trustee's Responses and Objections to the DAF Parties' Interrogatories, dated August 21, 2023.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: October 13, 2023

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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